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8 **UNITED STATES DISTRICT COURT**  
9 **SOUTHERN DISTRICT OF CALIFORNIA**  
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11 CLARKE SHELDON LOWE,

12 Petitioner,

13 vs.

14 JAMES E. TILTON,

15 Respondent.

CASE NO. 07cv2232-LAB

**ORDER DENYING REQUEST FOR  
LEAVE TO RENEW A MOTION FOR  
RELIEF FROM JUDGMENT OR  
ORDER**

16 Clarke Sheldon Lowe was convicted in San Diego County Superior Court of several  
17 charges including rape, kidnapping, and indecent exposure. He was sentenced to a  
18 determinate term of eight years and an indeterminate term of 25 years to life. The California  
19 Court of Appeal affirmed the conviction. The Supreme Court of California denied review.  
20 Since then, Lowe has collaterally attacked the judgment both in state and federal court on  
21 several occasions. Each time the petition was denied as untimely under the Antiterrorism  
22 and Effective Death Penalty Act of 1996 ("AEDPA") statute of limitations based on the three  
23 month delay between the denial of Lowe's habeas corpus petition in San Diego County  
24 Superior Court and the filing of his habeas petition in the California Court of Appeal.

25 Lowe argues that his petition was untimely because his attorney, John Lanahan, was  
26 unaware that the AEDPA statute of limitations was tolled for only 60-days after the trial  
27 court's denial of habeas relief, causing him to miss a filing deadline. Lowe filed a complaint  
28 against Lanahan with the Arbitration Committee of the San Diego County Bar Association

1 alleging professional negligence. The Arbitration Committee found in Lowe's favor without  
 2 deciding his professional negligence claim. Lowe claims that the arbitration proceeding  
 3 uncovered a March 2007 e-mail between his mother and Lanahan. The e-mail suggests that  
 4 Lanahan was unaware of the filing deadline. Based on the e-mail, Lowe renews his previous  
 5 request for Leave to Renew a Motion for Relief from Judgment pursuant to Rule 60(b)(6) of  
 6 the Federal Rules of Civil Procedure.

### 7 **I. Discussion**

8 AEDPA gives a state prisoner whose conviction has become final one year to seek  
 9 federal habeas corpus relief. 28 U.S.C. § 2244(d)(1)(A). But, the one year limitations period  
 10 is subject to equitable tolling for the "time during which a properly filed application for State  
 11 . . . collateral review . . . is pending." 28 U.S.C. § 2244(d)(2).<sup>1</sup> In addition, a petitioner may  
 12 be entitled to equitable tolling if he can show: (1) that he has been pursuing his rights  
 13 diligently; and (2) that some extraordinary circumstance stood in his way and prevented  
 14 timely filing. *See Holland v. Florida*, 560 U.S. 631, 648 (2010).

15 Lowe hasn't acted with reasonable diligence. Lowe was aware that his attorney had  
 16 missed the deadline by, at the latest, July of 2012, but did not bring this motion until August  
 17 of 2015. And the e-mail underlying this motion is from March 2007. There's no reason why  
 18 Lowe couldn't retrieve it from his mother and submit it to the Court years before he did.  
 19 While it's unlikely, even if Lowe could credibly claim that the e-mail between his mother and  
 20 Lanahan wasn't available until he filed a complaint with the Arbitration Committee, Lowe  
 21 offers no explanation for waiting until August 2014 to do so.

22 Lowe also hasn't shown "extraordinary circumstances." "A garden variety claim of  
 23 excusable neglect, such as a simple 'miscalculation' that leads a lawyer to miss a filing  
 24 deadline, does not warrant equitable tolling." *Holland*, 560 U.S. 651–52. That a petitioner's  
 25 attorney failed to file a habeas petition on time and was "unaware of the date on which the  
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27 <sup>1</sup> Tolling is also available for the intervening period between state habeas petitions but  
 28 only when the petitioner files the later state habeas petition "within what California would  
 consider a 'reasonable time.'" *Evans v. Chavis*, 546 U.S. 189, 198 (2006). A reasonable  
 time to file an appeal from the denial of a habeas petition is 30 to 60 days. *Id.* at 192–93.

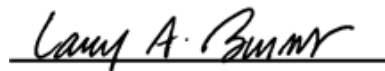
1 limitations period expired"—as Lanahan's e-mail exchange indicates here—"might suggest  
2 simple negligence," but doesn't rise to the level of extraordinary circumstances envisioned  
3 in *Holland*. *Cf. id.* at 652. In that case, the petitioner wrote his attorney numerous letters  
4 seeking crucial information and repeatedly emphasizing the importance of filing a timely  
5 petition, and he even identified the applicable legal rules. *Id.* at 652–53. In this case,  
6 however, Lowe's mother sent only one e-mail plausibly bearing on the subject, and she sent  
7 it after Lanahan had already missed the statute of limitations deadline.

8 **III. Conclusion**

9 For the reasons set forth above, this Court **DENIES** Petitioner's request.

10 **IT IS SO ORDERED.**

11 DATED: November 18, 2015

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13 **HONORABLE LARRY ALAN BURNS**  
14 United States District Judge  
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